Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1994

WERNER T. HEUER,

Petitioner,

v.

UNITED STATES SECRETARY OF STATE,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Title 8 U.S.C. §1503(a) requires that any action brought to declare U.S. nationality must be filed within five years of the final administrative denial of a claim as a U.S. national. In the instant case, the United States Court of Appeals for the Eleventh Circuit, in express conflict with the United States Court of Appeals for the Third Circuit, determined that the five year period commenced upon petitioner's renunciation of his citizenship in 1978, rather than the denial of his U.S. passport application in 1991. The question presented is:

> Does the five year limitation period imposed by title 8 U.S.C. §1503(a) commence upon renunciation of U.S. citizenship, or upon a subsequent denial of a claim as a U.S. national in an administrative proceeding on the basis that the claimant is not a U.S. national?

PARTIES TO THE PROCEEDING

The parties are those named in the caption. In compliance with Supreme Court Rule 29.1, petitioner has no parent companies, non-wholly owned subsidiaries, or affiliates.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 6

REASONS FOR GRANTING THE WRIT 8

The Eleventh Circuit's Holding That The Five Year Limitation Period Imposed By Title 8 U.S.C. §1503(a) Commences Upon Formal Renunciation Of U.S. Citizenship Rather Than Upon A Subsequent Administrative Denial Of A Claim As A U.S. National On The Basis That The Claimant Is Not A U.S. National, Is In Direct And Express Conflict With The Decision Of The United States Court Of Appeals For The Third Circuit 8

CONCLUSION 16

APPENDIX ..... App. 1

TABLE OF AUTHORITIES

Page

CASES

Chin Chuck Ming v. Dulles, 225 F.2d 849 (9th Cir. 1955) 11

Heuer v. United States Secretary of State, 20 F.3d 424 (11th Cir. 1994) 1, 13, 14

Lee Wing Hong v. Dulles, 214 F.2d 753 (7th Cir. 1954) 11

Maldonado-Sanchez v. Schultz, 706 F.Supp. 54 (D.D.C. 1989) 11, 12, 13, 14

Moy Yee Mon v. Dulles, 161 F.Supp. 924 (E.D. Mich. 1958) 11

Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985) 10

Schneiderman v. United States, 320 U.S. 118 (1976) 9

Whitehead v. Haig, 794 F.2d 115 (3d Cir. 1985) 8, 10, 11, 12, 13, 14

STATUTES

8 U.S.C. §1481(a) 2

8 U.S.C. §1501 ..... 4, 10

8 U.S.C. §1503(a) ..... *passim*

28 U.S.C. §1254(1) 1

28 U.S.C. §1291 1

28 U.S.C. §2201 ..... 1, 2

The petitioner, Werner T. Heuer, respectfully prays that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Eleventh Circuit entered in the above-entitled proceeding on May 5, 1994.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit, dated May 5, 1994, which appears in the appendix hereto at App. 1, *infra*, is reported at *Heuer v. United States Secretary of State*, 20 F.3d 424 (11th Cir. 1994).

The Order of the United States District Court for the Southern District of Florida, which appears in the appendix hereto at App. 11, *infra*, is unreported.

The Report and Recommendation of the United States Magistrate Judge of the United States District Court for the Southern District of Florida, which appears in the appendix hereto at App. 13, *infra*, is unreported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The decision of the circuit court, affirming the order of the district court, was entered May 5, 1994. The time within which to apply for certiorari thus runs from that date and expires on August 3, 1994.

The jurisdiction of the circuit court of appeals was invoked pursuant to title 28 U.S.C. §§1291 and 2201.

The jurisdiction of the district court was invoked pursuant to title 28 U.S.C. §2201 and title 8 U.S.C. §1503(a).

STATUTORY PROVISIONS INVOLVED

1. 8 U.S.C. §1481 (1992)

§1481. Loss of nationality by native-born or naturalized citizen, voluntary action; burden of proof; presumptions

(a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality–

> (1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or
>
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or
>
> (3) entering, or serving in, the armed forces of a foreign state if (A) such armed forces are engaged in hostilities against the United States, or (B) such persons serve as a commissioned or non-commissioned officer; or

(4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years if he has or acquired the nationality of such foreign state; or (B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, or willfully performing any act in violation of section 2385 of title 18, or violating section 2384 of title 18 by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when

he is convicted thereof by a court martial or by a court of competent jurisdiction.

(b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

2. 8 U.S.C. §1501 (1992)

§1501. Certificate of diplomatic or consular officer of United States as to loss of American nationality

Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of Part III of this subchapter, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report

was made shall be directed to forward a copy of the certificate to the person to whom it relates.

3. 8 U.S.C. §1503(a)(1992)

§1503. Denial of rights and privileges as national

(a) Proceedings for declaration of United States nationality

If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any exclusion proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such exclusion proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is conferred upon those courts.

STATEMENT OF THE CASE

Mr. Heuer, the son of Venezuelan nationals, was born in Washington, D.C. on August 9, 1956. Thus, he acquired both U.S. and Venezuelan citizenship. Because his parents divorced when he was three years old, Mr. Heuer was brought up by his grandparents who were extremely nationalistic Venezuelans. In fact, Mr. Heuer's grandfather was the Venezuelan Ambassador to Nicaragua. Many of his formative years were spent in Washington, D.C. and attending American schools.

Despite his desire to do so, Mr. Heuer's grandparents forbade him from applying for a U.S. passport, and in fact made coercive efforts for Mr. Heuer to renounce his U.S. citizenship. His grandparents and father threatened to outcast him from the family if he did not renounce his U.S. citizenship.

Finally, after much browbeating and while recovering from a severe bout with hepatitis, Mr. Heuer succumbed to the familial pressure. On October 27, 1977, Mr. Heuer renounced his citizenship as prescribed by title 8 U.S.C. §1481(a). On October 31, 1977, the U.S. Embassy in Venezuela forwarded a Certificate of Loss of Nationality ("CLN") to the Department of State. On April 27, 1978, the Department of State approved the CLN, thereby certifying Mr. Heuer's renunciation of his citizenship as October 27, 1977.

Mr. Heuer went on to attend college in the United States. Away from the influence of his family, he began to realize the consequences of his renunciation of his U.S. citizenship. Upon gaining financial independence from his family, Mr. Heuer applied for a U.S. passport in

Miami, Florida, in December 1988. That application was denied on January 6, 1989, by the Miami passport agency on the ground that Mr. Heuer was no longer a U.S. citizen.

On April 7, 1989, Mr. Heuer sought review of that denial with the Department of State Board of Appellate Review. On January 18, 1991, the Board dismissed the proceedings as being time-barred.

On September 18, 1992, Mr. Heuer, acting pro se, filed his Complaint pursuant to title 8 U.S.C. §1503(a) naming the United States Secretary of State ("Secretary") as defendant, and seeking a declaration of United States nationality. The basis of that action was that Mr. Heuer's renunciation of U.S. citizenship was the result of coercion, duress and undue influence. The case was referred to a Magistrate Judge and the Secretary moved to dismiss for lack of subject matter jurisdiction on the basis that Mr. Heuer's action was time-barred.

Mr. Heuer filed his opposition and on February 24, 1993, the Magistrate Judge, without addressing the factual merits of the case, issued his Report and Recommendation recommending that the case be dismissed for lack of subject matter jurisdiction. Mr. Heuer timely filed his objections and on March 17, 1993, the district court entered its Order Affirming The Magistrate's Report and Recommendation and Final Order of Dismissal. The basis of that order was that the applicable five year limitation period imposed by §1503(a) began to run on April 27, 1978, when Mr. Heuer's renunciation was approved, rather than from January 18, 1991, when his application for U.S. passport was finally denied. Mr. Heuer filed a

Motion for Reconsideration which was denied on April 22, 1993.

Mr. Heuer, through counsel, timely filed his Notice of Appeal. On May 5, 1994, the Circuit Court of Appeals for the Eleventh Circuit issued its published opinion affirming the district court. Acknowledging that its opinion conflicted with that of the Circuit Court of Appeals for the Third circuit, and based upon statutory interpretation and public policy grounds, the Eleventh Circuit held that the five year limitation period imposed by §1503(a) commences upon the renunciation of citizenship and the resulting issuance of a CLN.

Petitioner seeks review of the Eleventh Circuit's judgment which held that the five year limitation period commenced upon the renunciation of citizenship.

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit's Holding That The Five year Limitation Period Imposed By Title 8 U.S.C. §1503(a) Commences Upon Formal Renunciation Of U.S. Citizenship Rather Than Upon A Subsequent Administrative Denial Of A Claim As A U.S. National On The Basis That The Claimant Is Not A U.S. National, Is In Direct And Express Conflict With The Decision Of The United States Court Of Appeals For The Third Circuit.

The Eleventh Circuit's holding that the five year limitation period imposed by §1503(a) commences upon the issuance of a CLN after surrender and formal renunciation of citizenship is (1) in direct and express conflict with the decision of the United States Court of Appeals for the Third Circuit published at *Whitehead v. Haig*, 794

F.2d 115 (3d Cir. 1986), and (2) is an important question of federal law which has not, but which should be, settled by this Court.

As recognized by this Court, U.S. citizenship is regarded by many "as the highest hope of civilized man." *Schneiderman v. United States*, 320 U.S. 118, 122 (1976). Title 8 U.S.C. §1503(a) provides a remedy to those who have had that hope unduly taken from them. That remedy, however, is not without limit. It must be sought within five years of (1) a denial, (2) of a claim as a U.S. national, (3) in an administrative proceeding, and (4) on the basis that the claimant is not a U.S. national.

In the case at bar the Eleventh Circuit rejected Mr. Heuer's argument that the 1991 denial of his U.S. passport application triggered the five year limitation period. Rather, the court held, it was Mr. Heuer's 1978 surrender and formal renunciation of citizenship which triggered the five year limitation period, and therefore, his action which was commenced in 1991 was time-barred. Not only is this holding in direct conflict with the Third Circuit's *Whitehead* decision, it is contrary to the plain language and meaning of §1503(a).

Simply stated, the issuance of a CLN after surrender and formal renunciation of citizenship cannot trigger the §1503(a) limitation period because that act is not the *denial* of a claim. In fact it is the antithesis of a denial. The right to renounce one's citizenship is an inherent right of every U.S. national:

> [T]he right of expatriation is a natural and inherent right of all people, indispensable to the

> enjoyment of the rights of life, liberty, and the pursuit of happiness.

Richards v. Secretary of State, 652 F.2d 1413, 1422 (9th Cir. 1985 (quoting Preamble to the Act of July 27, 1868, ch. 249, 15 Stat. 233)). When a U.S. national renounces citizenship, he has exercised and been granted, not denied, this inherent right. Moreover, the issuance of a CLN pursuant to a formal surrender of nationality is automatic and in no manner involves administrative proceedings as is required to trigger the §1503(a) limitation period.

Indeed, in *Whitehead* the claimant formally renounced his U.S. citizenship in 1965. In 1980 the claimant applied for a U.S. passport which was denied on the basis of the renunciation. In 1981 he initiated an action pursuant to §1503(a) in the United States District Court for the Southern District of New York claiming that his renunciation of citizenship had been coerced and completed under duress. After transfer of the case to the District of New Jersey, the Secretary moved to dismiss on the basis that the five year limitation period commenced in 1965 when the CLN was issued. The district court granted the motion.

Upon reversing, the Third Circuit held that the claimant's formal renunciation of his U.S. citizenship in no manner could be viewed as a final administrative denial which would trigger the five year limitation period:

> [W]e are hard pressed to see how a "final administrative denial" may result from an automatic issuance of a document which does not involve administrative proceedings. Whitehead requested no benefit which could be denied him under §1501. He surrendered his citizenship by

> formal renunciation. It was not taken from him. No adjudication by the government was required nor, indeed, even authorized by §1501. The act of expatriation by formal renunciation occurs entirely without formal or informal administrative determination as we understand that concept, and therefore we find that the automatic issuance of a Certificate of Loss upon the act of formal renunciation does not constitute a final administrative denial for the purpose of determining when the five-year time limitation contained in §1503(a) begins to run.

Whitehead, 794 F.2d at 118.

The court followed the long line of cases which holds that the denial of a passport application is a final administrative denial of a right as a U.S. national.[1] The court ultimately held that the five year limitation period had commenced upon the denial of the claimant's passport application, and that the §1503(a) action had been timely initiated.

Since *Whitehead*, the only other published opinion to address this issue (prior to the Eleventh Circuit's decision here) is *Maldonado-Sanchez v. Schultz*, 706 F.Supp. 54 (D.D.C. 1989). Although a district court decision, *Maldonado* is strikingly similar to the case at bar, and quite instructive on how courts have addressed the §1503(a) limitation period.

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[1] *Whitehead v. Haig*, 794 F.2d 115, 119 (3d Cir. 1986); *Chin Chuck Ming v. Dulles*, 225 F.2d 849, 853 (9th Cir. 1955); *Lee Wing Hong v. Dulles*, 214 F.2d 753, 756 (7th Cir. 1954); *Moy Yee Mon v. Dulles*, 161 F.Supp. 924, 926 (E.D. Mich. 1958).

In *Maldonado,* the claimant acquired dual citizenship in the United States and Venezuela, the latter due to his parents' Venezuelan citizenship. In 1967, upon turning 18 years old, the claimant with his father visited the U.S. Embassy in Caracas where the claimant executed a renunciation of his U.S. citizenship. A CLN was issued.

Nineteen years later, while on a visitor's visa in the United States in 1986, the claimant applied for a U.S. passport. That application was denied on the basis that he no longer was a U.S. national. The claimant's appeal to the Board of Appellate Review was dismissed. The claimant filed an action in district court pursuant to §1503(a) where he argued that his renunciation of citizenship was not voluntary, but rather was the result of familial coercion and pressure.

The Secretary of State moved to dismiss the complaint on the basis that the five year limitation period had long expired, having commenced upon the issuance of the CLN in 1967. Upon considering the plain language of §1503(a), the court unequivocally rejected the Secretary's argument. The court held that the limitation period commenced upon the denial of the claimant's passport application in 1986.[2]

The reasoning of *Maldonado* parallels that of *Whitehead.* Under the plain language of §1503(a), the action must be commenced within five years from the final administrative "denial" of a claim or right as a U.S.

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[2] The Secretary's motion to dismiss was ultimately granted on grounds unrelated to the limitation period.

national. The issuance of a CLN is not the denial of a right, but rather the granting of a right:

> [A]s a national, plaintiff had the right to request relinquishment of his citizenship. Having this request *granted* by way of a CLN simply cannot be characterized as a *denial* of a right; the right to renounce citizenship has clearly been granted.

Maldonado, 706 F.Supp. at 56 (emphasis in original).

Upon rejecting *Whitehead* and *Maldonado*, the Eleventh Circuit acknowledged that its decision conflicted with those decisions:

> The Court . . . believes *Whitehead* and *Maldonado-Sanchez* were wrongly decided.
>
> * * *
>
> Contrary to the reasoning in *Maldonado-Sanchez*, the issuance of a CLN is a denial.
>
> * * *
>
> Contrary to the reasoning in *Whitehead*, the issuance of a CLN is also the product of administrative proceedings.

Heuer, 20 F.3d at 426-27.

The flaw in the Eleventh Circuit's reasoning is its failure to acknowledge the difference between a CLN issued pursuant to formal renunciation of nationality, and a CLN issued against the will of a claimant who seeks to remain a citizen. Certainly the latter is the denial of a right as a U.S. national and typically issued after due process is afforded in administrative proceedings. The former, however, is a grant and automatically issued pursuant to the request of the claimant. *Whitehead*, 794 F.2d at 118.

In an effort to conform its decision with the plain language of §1503(a), the Eleventh Circuit coined a new oxymoron and referred to a formal renunciation as a "request[ed] denial." *Heuer,* 20 F.3d at 427. No matter what angle it is viewed from, however, the grant of a "requested denial" is nothing but a grant.

In addition to rendering its decision on the basis of what it referred to as "statutory grounds," the Eleventh Circuit also purported to address what it perceived to be public policy concerns. The most alarming public policy determination made by the court is its finding that imposing an earlier commencement date for a §1503(a) action serves the "important function of mandating a review of the issuance of the CLN when the relevant events are fresh in the minds of the participants." *Heuer,* 20 F.3d at 428 n.1. That concern is important and was acknowledged as being so by both the *Whitehead* and *Maldonado* courts. Those courts, however, left it to the legislature to determine whether and how that concern affects the §1503(a) limitation period:

> The Court cannot distort that plain meaning of a statute in order to achieve a specific result, however desirable.

Maldonado, 706 F.Supp. at 58.

> [I]t is for Congress to amend the statute if it objects to the result.

Whitehead, 794 F.2d at 120, n.5.

Certainly when the government has issued a CLN against the will of a citizen, that citizen is aware of the reasons for the loss of his citizenship, and the five year limitation period offers more than reasonable time in

which to challenge the loss. When, on the other hand, a CLN is issued at the request of a young individual who has been subjected to unbearable familial pressure, it may be significantly longer than five years until that individual matures, realizes that he had been subject to duress and understands the significance of having renounced U.S. citizenship. Thus, just as many statutory limitation periods do not commence until the claimant knows of the violation of his rights, §1503(a) operates much in the same manner. This is a sound public policy legislated into §1503(a) which the Eleventh Circuit, acting far outside the bounds of its judicial role, has disregarded and abrogated.

Other than life itself, U.S. citizenship may be the most valuable asset a human being can possess. The decision of the Eleventh Circuit denies that asset to persons, such as Mr. Heuer, who may have a rightful entitlement. The decision is in irreconcilable conflict with the decision of the Third Circuit, and raises issues of immeasurable importance to those affected by the decision. That conflict and those issues can only be resolved by plenary consideration of the matter by this Court.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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Werner T. HEUER, Plaintiff-Appellant,

v.

UNITED STATES SECRETARY OF STATE, Defendant-Appellee.

No. 93-4674.

United States Court of Appeals,
Eleventh Circuit.

May 5, 1994.

Former United States citizen filed suit seeking judicial declaration of United States citizenship after application for United States passport was denied. The United States District Court for the Southern District of Florida, No. 92-2174-CIV, James Lawrence King, J., dismissed action with prejudice for lack of subject matter jurisdiction on ground that suit was time barred. Appeal was taken. The Court of Appeals held that issuance of certificate of loss of nationality following plaintiff's renouncement of United States citizenship was a denial of right or privilege on claim of United States nationality which triggered running of five-year statute of limitations.

Affirmed.

Douglas H. Stein, Miami, FL, for appellant.

Dexter A. Lee, Asst. U.S. Atty., Roberto Martinez, U.S. Atty., Miami, FL, for appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before BLACK, Circuit Judge, DYER, Senior Circuit Judge, and ALAIMO*, Senior District Judge.

PER CURIAM:

Appellant, Werner T. Heuer ("Heuer"), seeks review of the district court's dismissal with prejudice of his *pro se* action against Appellee, the United States Secretary of State ("Secretary of State"), for a declaration of United States nationality. The district court's dismissal was based upon a determination that the action was time-barred. We affirm.

I. FACTS

The facts of this case are taken as alleged by Appellant. Heuer, the son of Venezuelan nationals, was born in Washington, D.C., on August 9, 1956. Thus, by virtue of his parents' nationality and his place of birth, Heuer acquired both Venezuelan and United States citizenship. Heuer was raised primarily by his grandparents, who were extremely nationalistic Venezuelans, and who demanded that Heuer sever allegiance to the United States. Succumbing to family pressure, Heuer renounced his United States citizenship on October 27, 1977, as prescribed by 8 U.S.C. § 1481(a). On October 31, 1977, the United States embassy in Venezuela forwarded a Certificate of Loss of Nationality ("CLN") to the Department of State for its approval and issuance. On April 27, 1978, the Department of State approved and issued the CLN,

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* Honorable Anthony A. Alaimo, Senior U.S. District Judge of the Southern District of Georgia, sitting by designation.

thereby certifying Heuer's renouncement, effective October 31, 1977.

Thereafter, Heuer underwent a change of heart. In December 1988, after having permanently relocated to the United States passport. The Miami Passport Agency denied the application on January 6, 1989, upon a determination that Heuer had become expatriated by his former renunciation of American citizenship. The Passport Agency's decision was affirmed by the Board of Appellate Review on January 18, 1991.

In September 1992, Heuer filed suit against the Secretary of State for a judicial Declaration of United States Citizenship. Heuer alleged that his prior renunciation of United States citizenship was due to familial coercion and duress. The United States District Court for the Southern District of Florida, King, J., dismissed the action with prejudice, for lack of subject matter jurisdiction. Specifically, the district court adopted the Report and Recommendation of the Magistrate Judge that the applicable five year statute of limitations, prescribed by 8 U.S.C. § 1503(a), began on April 27, 1978, when the Department of State approved and issued the CLN, and that the declaratory action was, therefore, time-barred.

On appeal, Heuer maintains that the district court erred in determining when the statute of limitations was triggered. Heuer argues that the five year statute of limitations began not on April 27, 1978, when the CLN was issued, but, rather, on January 18, 1991, when his application for a United States passport was denied. Accordingly, as the September 1992 application for United States citizenship was within five years of January 18, 1991,

Heuer contends that the district court's dismissal of his action was erroneous.

II. ISSUE ON APPEAL

WHETHER THE DISTRICT COURT ERRED IN DETERMINING THAT THE ISSUANCE OF THE CLN TRIGGERED THE STATUTE OF LIMITATIONS, PURSUANT TO 8 U.S.C. § 1503(a).

III. ANALYSIS

As the only issue before the court is one of law, our standard of review is *de novo. Woodruff v. United States Dept. of Labor,* 954 F.2d 634, 636 (11th Cir.1992).

The Court's analysis begins with an examination of the elements of 8 U.S.C. § 1503(a), which prescribes the statute of limitations applicable to the current case. This statute provides in relevant part that:

> If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency . . . upon the ground that he is not a national of the United States, such person may institute an action . . . for a judgment declaring him to be a national of the United States . . . An action under this subsection may be instituted only within five years after the *final administrative denial* of such right or privilege . . .

(Emphasis added.)

We note that the denial of an application for a United States passport is a denial of a right or privilege on a claim as a United States national, and that the denial

stems from an administrative proceeding. The United States impliedly concedes this point. This is not, however, the focal issue. As a statute of limitations is involved, the view must be to the *first* possible trigger to begin the countdown. In this case, then, the issue may be restated to ask whether the prior approval and issuance of a CLN by the Department of State similarly falls under 8 U.S.C. § 1503(a). The Court finds that it does.

Two lines of cases have potential bearing. The Secretary of State relies heavily on *Garcia-Sarquiz v. Saxbe*, 407 F.Supp. 789 (S.D.Fla.1974), *aff'd sub nom. Garcia-Sarquiz v. Levi*, 527 F.2d 1389 (5th Cir.1976) (per curiam). In that case, Plaintiff-Appellant, Eduardo Eladio Garcia-Sarquiz ("Garcia-Sarquiz"), renounced his American citizenship in 1947. The CLN was issued in 1951. In 1969, while residing in the United States, Garcia-Sarquiz was convicted of narcotics trafficking. The United States sought deportation in 1970. Garcia-Sarquiz argued against deportation by seeking a declaration of American citizenship pursuant to 8 U.S.C. § 1503. The district court, however, held that this provision was not available to persons proceeded against by way of exclusionary proceedings nor to those whose claim of nationality arose from an Order of Deportation. 407 F.Supp. at 792. The district court continued in *dicta* that even if Garcia-Sarquiz could invoke 8 U.S.C. § 1503, such an action would be time-barred because the statute of limitations began to run upon Garcia-Sarquiz's renouncement of citizenship and not upon the government's initiation of deportation, as Garcia-Sarquiz contended. *Id.* This *dicta* was the primary basis for the district court's ruling in the current case.

Heuer urges us, however, to disregard the *dicta* in *Garcia-Sarquiz*, and invites the Court to follow *Whitehead v. Haig*, 794 F.2d 115 (3rd Cir.1986) and *Maldonado-Sanchez v. Shultz*, 706 F.Supp. 54 (D.D.C.1989). In both cases, the issue before the respective Court was whether the entry of a CLN or the subsequent denial of an application for a passport triggered the statute of limitations in 8 U.S.C. § 1503(a). In both cases, the respective Courts found that it was the later.

In *Maldonado-Sanchez*, under facts strikingly similar to those in the current case, the district court reasoned that the issuance of a CLN is not the *denial* of a right based on a claim as a United States national but, rather, the *grant* of a right as a United States national (*e.g.*, to renounce voluntarily American citizenship). 706 F.Supp. at 56-57. In *Whitehead*, the Third Circuit reasoned, on a slightly different basis, that the issuance of a CLN did not begin the limitation period because such an issuance is not the product of an administrative proceeding, but is, instead, a ministerial "rubber stamp." *See* 794 F.2d at 118. The Third Circuit apparently felt that there is no discretion by the Department of State in the approval and issuance of a CLN, and that such an absence indicates that there is no meaningful administrative procedure present.

We decline Heuer's invitation. While the statute of limitations discussion in *Garcia-Sarquiz* was *dicta*, and is not, therefore, binding precedent on the Court, the spirit and reasoning of the case mandate an affirmance herein. The Court views *Garcia-Sarquiz's* discussion of the statute of limitations in 8 U.S.C. § 1503(a) as properly reasoned,

and believe *Whitehead* and *Maldonado-Sanchez* were wrongly decided.

Contrary to the reasoning in *Maldonado-Sanchez*, the issuance of a CLN is a denial. Specifically, such an issuance denies the status to be recognized as a United States national, and all the rights and claims thereto. *Linzalone v. Dulles*, 120 F.Supp. 107, 109 (S.D.N.Y.1954). *See also Kahane v. Shultz*, 653 F.Supp. 1486 (E.D.N.Y.1987). Indeed, in the current case, Heuer's application for a United States passport was denied *because of* the prior issuance of a CLN. The fact that, in some instances, the plaintiff "requests" the denial by renouncing voluntarily his American citizenship does not change the existence of such a denial.

Moreover, the issuance of a CLN is not always the product of a voluntary renunciation of citizenship. The United States may, on its own accord, issue a CLN if it determines that a United States national expatriated himself by engaging voluntarily in conduct inherently inconsistent with retained United States nationality. *See* 8 U.S.C. § 1481. *See also Kahane*, 653 F.Supp. at 1492. Accordingly, even under Heuer's view, the issuance of a CLN is not always the *grant* of a right to disclaim purposefully United States nationality.

Contrary to the reasoning in *Whitehead*, the issuance of a CLN is also the product of administrative proceedings. As noted previously, the formal renunciation of citizenship is not the sole trigger for the issuance of a CLN. *See* 8 U.S.C. § 1481. The different statutory bases for the Department of State to find expatriation convey that more than a mere ministerial "rubber stamp" is involved. It further bears note that one who is issued a CLN may

appeal its issuance to the Department of State's Board of Appellate Review. 22 C.F.R. § 50.52.

Moreover, the presence of administrative proceedings is made evident by virtue of the fact that the Department of State must ultimately and necessarily determine when to approve and issue a CLN. Until a CLN is approved and issued, any act of expatriation, whether or not intentional, is simply an act without significance to nationality or status. We emphasize that until such an approval and issuance by the Department of State occurs, the United States national is recognized as such, regardless of what act of expatriation is involved, even if he wishes to disavow American nationality.

We find, therefore, that the requirements mandated by 8 U.S.C. § 1503(a) are satisfied by the issuance of a CLN.

Beyond an examination of the statutory elements, we also reference the maxim of statutory construction that interpretations of statutes which lead to illogical or self-defeating results should not be imputed to the Legislature as the intended meaning of the statute. *See United States v. Castro,* 837 F.2d 441, 445 (11th Cir.1988). We feel that the current construction better conforms to this maxim than that in *Whitehead* and *Maldonado-Sanchez.* If a CLN is not deemed to be the denial of a right or privilege based on a claim of United States nationality, then a former national would not be able to invoke 8 U.S.C. § 1503 to seek judicial review of the issuance of a CLN against him. Instead, he would thereafter have to apply for a passport, have the application denied, and *then* commence suit under 8 U.S.C. § 1503(a). This would be

true even if the issuance of the CLN were within the statute of limitations, and even though the CLN is what is actually being challenged. We do not believe that such a required sequence of events was within the contemplation of this statute.

Therefore, for the reasons discussed above, we find that the issuance of a CLN is the denial of a right or privilege of United States nationality and is the product of administrative proceedings. Accordingly, the issuance of a CLN comports to 8 U.S.C. § 1503(a), and the statute of limitations therein is triggered if such an issuance is the first act of denial of a right or privilege based on a claim of United States Nationality.

Because the decision of the Court is based on statutory grounds, it is unnecessary to address the policy considerations emphasized by the United States on appeal.[1]

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[1] We note, however, that even the Court in *Maldonado-Sanchez* recognized the policy problems of its contrary position:

> The Court agrees with defendant's argument that to allow plaintiff to challenge his renunciation some twenty years after the fact is contrary to public policy. It places a tremendous burden on the government to produce witnesses years after the relevant events and to preserve documentation indefinitely. Moreover, a reasonable statute of limitations period serves the important function of mandating a review of the issuance of the CLN when the relevant events are fresh in the minds of the participants.

706 F.Supp. at 57-58.

CONCLUSION

On statutory grounds supported by public policy, we AFFIRM the decision below and hold as a matter of law that the issuance of a CLN is a denial of a right or privilege on a claim of United States nationality, within the meaning of 8 U.S.C. 1503(a), triggering the statute of limitations therein.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 92-2174-CV-King

WERNER T. HEUER,

Plaintiff,

vs.

UNITED STATES SECRETARY OF STATE,

Defendant.

_____/

ORDER AFFIRMING MAGISTRATE'S REPORT AND RECOMMENDATION, ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND FINAL ORDER OF DISMISSAL

THIS CAUSE came before the Court upon Defendant United States Secretary of State's ("Secretary") Motion to Dismiss for Lack of Subject Matter Jurisdiction. The dispositive issue in this motion is whether Plaintiff was untimely in contesting his loss of United States Nationality.

THE MATTER was referred to United States Magistrate Barry L. Garber for a report and recommendation. A Report and Recommendation dated February 24, 1993 has been filed, recommending that the Secretary's motion to dismiss for lack of subject matter jurisdiction be granted and the cause be dismissed with prejudiced [sic]. Plaintiff has filed an objection in the form of a letter addressed to the undersigned judge. The Court having reviewed the entire file and record herein, and being otherwise fully

advised in the premises, it is ORDERED AND ADJUDGED that United States Magistrate Garber's Report and Recommendation of February 24, 1993 be, and the same is, hereby RATIFIED, AFFIRMED and APPROVED in its entirety, and based thereon, the Secretary's Motion to Dismiss for Lack of Subject Matter Jurisdiction is GRANTED and the action is DISMISSED with prejudice.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of March, 1993.

JAMES LAWRENCE KING
JAMES LAWRENCE KING
UNITED STATES
DISTRICT JUDGE

cc: Magistrate Judge Barry L. Garber
Werner T. Heuer, *pro se*
Dexter A. Lee, AUSA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 92-2174-CIV-KING

MAGISTRATE JUDGE GARBER

WERNER T. HEUER,

Plaintiff,

v.

UNITED STATES SECRETARY
OF STATE,

Defendant.

_____/

REPORT AND RECOMMENDATION

THIS CAUSE comes before the Court pursuant to a Referral to Magistrate dated November 14, 1992 from Senior United States District Judge James Lawrence King. Pursuant to said referral the following Report and Recommendation is hereby submitted on defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction, or, in the Alternative, Motion to Dismiss for Failure to Comply With Rule 8, Federal Rules of Civil Procedure. Inasmuch as the Court has considered the Rule 8 issues in its Order dated February 19, 1993 such issues will not be considered herein. The subject matter jurisdiction challenge is the basis for this Report and Recommendation.

BACKGROUND

Plaintiff, whose parents were citizens of Venezuela, was born in the United States on August 9, 1956 and therefore

acquired United States citizenship. On October 27, 1977 plaintiff renounced renounced [sic] his United States nationality at the United States Embassy in Caracas, Venezuela before the Consul General and two (2) witnesses. Such renunciation was pursuant to the operative statute at the time, to wit: 8 U.S.C. § 1481(a)(6) which has since been succeeded by § 1481(a)(5). The operative statute provided that a national of the United States shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality:

> (5) making a formal renunciation of nationality before a diplomatic or consular office of the United States in a foreign state, in such form as may be prescribed by the Secretary of State.

Plaintiff, at that time, executed an Oath of Renunciation, a Statement of Understanding, and a Separate Statement of Decision wherein plaintiff set forth his reasons for renouncing his citizenship.[1] Thereafter, and pursuant to 8 U.S.C. § 1501 a Certificate of Loss of Nationality (CLN), together with the other documents referred to herein, were forwarded to the Department of State who, on April 27, 1978 approved the CLN thereby certifying plaintiff's loss of nationality as of October 27, 1977, the date on which plaintiff executed the requisite documents at the United States Embassy in Venezuela.

Plaintiff, on September 18, 1992 filed this cause now before the Court. The defendant, in its Motion to Dismiss,

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[1] The documents referred to herein are a part of the record in this cause and are appended to the Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction, etc.

claims that this cause is time-barred by 8 U.S.C. § 1503(a), thus depriving this Court of jurisdiction. The undersigned agrees for the reasons set forth herein.

DISCUSSION

Jurisdiction in this cause is based upon 8 U.S.C. § 1503(a) which provides, *inter alia*, that

> (a) If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of Title 28 as against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any exclusion proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such exclusion proceeding. *An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege* and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is conferred upon those courts.

(Emphasis supplied).

Plaintiff claims that his quest for relief is timely in that the complaint was filed within five (5) years from the

denial of his application for a United States passport, which denial occurred on January 6, 1989. Such reliance, in view of the unequivocal language of 8 U.S.C. § 1503(a) is clearly misplaced. Under § 1503(a) plaintiff was required to commence this action on or before April 26, 1983 which was within the five (5) year period from the approval of the CLN by the Department of State.

Perhaps key words to be considered in the governing statute are "final administrative determination." *Linzalone v. Dulles,* 120 F.Supp. 107 (S.D.N.Y. 1954) determined that a certification of a CLN was a final administrative determination of a loss of nationality by the Department of State.

Application of the five (5) year filing period was squarely addressed in *Garcia-Sarquiz v. Saxbe,* 407 F.Supp. 789 (S.D. Fla. 1974), *aff'd. sub. nom. Garcia-Sarquiz v. Levi,* 527 F.2d 1389 (5th Cir. 1976) (*per curiam*). *Garcia-Sarquiz* holds that

> The right to bring such a declaratory judgment action is limited by the requirement that the action must be brought within five years of the final denial of the right or privilege as a National of the United States. The Plaintiff has claimed the denial of the most fundamental right or privilege of a National of the United States, to wit: his citizenship. *This occurred at the time of the entry of the Certificate of Loss of the Nationality of the United States* on December 11, 1950 not by the entry of a Deportation Order based upon such certificate.

In view of the foregoing it is clear that plaintiff's cause of action arose on April 27, 1977 and that he was required to

file this action no later than April 26, 1983. He did not file until September 18, 1992, in excess of fourteen (14) years from the approval of the plaintiff's Certificate of Loss of Nationality.

CONCLUSION AND RECOMMENDATION

Plaintiff is barred from proceeding in this cause by his failure to timely institute these proceedings within the five (5) year period mandated by 8 U.S.C. § 1503(a) and, accordingly, this cause must be dismissed.

After careful consideration of this matter and for the reasons set forth above, the undersigned hereby

RECOMMENDS that the defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction be GRANTED and that the cause be DISMISSED WITH PREJUDICE.

The parties have ten (10) days from the date of this Report and Recommendation within which to file written objections, if any, with Senior United States District Judge James Lawrence King. *See* 28 U.S.C. 636 (1991). Failure to file timely objections may bar the parties from attacking on appeal the factual findings contained herein. *LoConte v. Dugger*, 847 F.2d 745, 750 (11th Cir.), *cert. denied*, 488 U.S. 958 (1988).

RESPECTFULLY SUBMITTED at the United States Courthouse, Miami, Florida this 24th day of February 1993.

/s/ Barry L. Garber
BARRY L. GARBER
UNITED STATES
MAGISTRATE JUDGE

Copies supplied to:
Sr. United States District Judge James Lawrence King
Werner T. Heuer, *pro se*
Dexter A. Lee, AUSA

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 94-161

In the Supreme Court of the United States

OCTOBER TERM, 1994

WERNER T. HEUER, PETITIONER

v.

UNITED STATES SECRETARY OF STATE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Department of State's issuance of a Certificate of Loss of Nationality to an individual who has formally renounced his United States citizenship constitutes a "final administrative denial" of a right or privilege as a national of the United States, thereby commencing the running of the five-year statute of limitations imposed by 8 U.S.C. 1503(a) for actions seeking a judicial declaration of United States nationality.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	5
Conclusion	10

TABLE OF AUTHORITIES

Cases:

Brady v. *United States*, 397 U.S. 742 (1970)	9
Ferretti v. *Dulles*, 246 F.2d 544 (2d Cir. 1957)	8
Garcia-Sarquiz v. *Saxbe*, 407 F. Supp. 789 (S.D. Fla. 1974), aff'd, 527 F.2d 1389 (5th Cir. 1976)	8
Kahane v. *Shultz*, 653 F. Supp. 1486 (E.D.N.Y. 1987)	8
Linzalone v. *Dulles*, 120 F. Supp. 107 (S.D.N.Y. 1954)	8
Maldonado-Sanchez v. *Shultz*, 706 F. Supp. 54 (D.D.C. 1989)	7, 8, 9
Richards v. *Secretary of State*, 752 F.2d 1413 (9th Cir. 1985)	8, 9
Ticor Title Ins. Co. v. *Brown*, 114 S. Ct. 1359 (1994)	9
Vance v. *Terrazas*, 444 U.S. 252 (1980)	5, 8
Whitehead v. *Haig*, 794 F.2d 115 (3d Cir. 1986)	4, 5, 6, 8

Statutes and regulations:

Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 106, 108 Stat. 4305	6, 8
8 U.S.C. 1481	3
8 U.S.C. 1481(a)	3
8 U.S.C. 1481(a)(5)	2, 3, 4, 5, 8, 9
8 U.S.C. 1481(b)	4-5
8 U.S.C. 1501 (§ 358)	2, 3, 4, 6, 9
8 U.S.C. 1503	5, 7, 8
8 U.S.C. 1503(a)	2, 3, 4, 6, 8, 9

Regulations—Continued: Page

22 C.F.R.:
Section 7.3(a) 6
Section 50.50 4
Section 50.52 6
Sections 50.60-50.72 (1967) 6

Miscellaneous:

139 Cong. Rec. S8554 (daily ed. July 1, 1993) 7
31 Fed. Reg. 13,537 (1966) 6
7 Foreign Affairs Manual (1984) 6

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WERNER T. HEUER, PETITIONER

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UNITED STATES SECRETARY OF STATE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-10) is reported at 20 F.3d 424. The order of the district court (Pet. App. 11-12) is unreported. The report and recommendation of the magistrate judge (Pet. App. 13-18) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 5, 1994. The petition for a writ of certiorari was filed on July 26, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner was born in the United States to parents who were Venezuelan citizens, and he thereby became a citizen of both Venezuela and the United States. Pet. App. 2. On October 27, 1977, at the age of 21, petitioner presented himself at the United States Embassy in Caracas, Venezuela, and formally renounced his United States citizenship before the Consul General and two witnesses, in accordance with 8 U.S.C. 1481(a)(5) and its implementing regulations. Pet. App. 2, 14. As part of the renunciation process, petitioner executed an oath of renunciation, a "Statement of Understanding," and a separate "Statement of Decision" setting forth his reasons for the renunciation. *Id.* at 14. On October 31, 1977, the Embassy forwarded a draft Certificate of Loss of Nationality (CLN) with respect to petitioner to the Department of State, in accordance with 8 U.S.C. 1501. The Department approved and issued petitioner's CLN on April 27, 1978. Pet. App. 2.

Petitioner subsequently returned to the United States to attend college, and took up permanent residence in this country. Pet. 6; Pet. App. 3. In 1988, at the age of 32, petitioner applied for a United States passport. The Miami Passport Agency denied the application on the basis of petitioner's previous renunciation of his United States citizenship. The State Department's Board of Appellate Review affirmed the denial of petitioner's application in January, 1991. Pet. App. 3.

2. In September, 1992, petitioner filed this action under 8 U.S.C. 1503(a). Pet. App. 3. Section 1503(a) provides that any person within the United States who "claims a right or privilege as a national of the United States and is denied such right or privilege by any department * * * upon the ground that he is not a

national of the United States" may seek a judicial declaration of U.S. nationality. Petitioner alleged that his prior renunciation of citizenship resulted from family coercion and duress and was therefore not "voluntarily perform[ed]" within the meaning of 8 U.S.C. 1481. Pet. App. 3; see Pet. 6.

The district court accepted the magistrate's recommendation that petitioner's complaint be dismissed for failure to comply with the statute of limitations set out in Section 1503(a), which provides that "[a]n action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege." Pet. App. 11-12, 17. The magistrate concluded that the limitations period began to run on April 27, 1978, when the Department of State approved and issued petitioner's CLN, rather than when he later applied for and was refused a U.S. passport. *Id.* at 15-17. Because petitioner filed his action more than 14 years after the issuance of his CLN, the court held that the declaratory action was time-barred. *Id.* at 16-17.

The court of appeals affirmed. Pet. App. 1-10. It reasoned that issuance of a CLN is an "administrative denial" of a "right or privilege as a national of the United States," 8 U.S.C. 1503(a), because the CLN "denies the status to be recognized as a United States national, and all the rights and claims thereto." Pet. App. 7. The court noted (*ibid.*) that the Department of State may issue a CLN on its own initiative if it concludes that a U.S. national has engaged in any of the activities specified in 8 U.S.C. 1481(a), voluntarily and with the intent to relinquish U.S. nationality. See 8 U.S.C. 1501. The explicit renunciation procedure followed by petitioner is only one of those activities, see 8 U.S.C. 1481(a)(5), and the court concluded that the fact that in such cases an individual "requests" denial of his U.S.

nationality does not change the character of the formal denial embodied in the CLN. Pet. App. 7.

The court of appeals also rejected the reasoning of *Whitehead* v. *Haig*, 794 F.2d 115 (3d Cir. 1986), which held that the issuance of a CLN is not a "final administrative denial" within the meaning of 8 U.S.C. 1503(a). The Third Circuit believed that the State Department's issuance of a CLN upon receipt of a report from a consular officer was "automatic" and "ministerial," and was not the product of any administrative proceedings. 794 F.2d at 118. The court below concluded that, "[c]ontrary to the reasoning of *Whitehead*, the issuance of a CLN is * * * the product of administrative proceedings," not "a mere ministerial 'rubber stamp,'" because "one who is issued a CLN may appeal its issuance to the Department of State's Board of Appellate Review. 22 C.F.R. § 50.52." Pet. App. 7-8.[1]

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[1] The court also reasoned (Pet. App. 8) that issuance of a CLN involves a true administrative process because until the Department of State has made a determination of loss of nationality and issued a CLN, "any act of expatriation, whether or not intentional, is simply an act without significance to nationality or status." It is true that the statutory and regulatory process for voluntary renunciation of U.S. nationality is not complete until the Secretary has approved and issued a CLN, see 8 U.S.C. 1481(a)(5), 1501; 22 C.F.R. 50.50, and that, as a practical matter, the Department will generally continue to recognize an individual as a U.S. national until it has learned of a possible expatriating act, made inquiries, determined that such an act has occurred, and completed the administrative process that leads to issuance of a CLN. The Act does not, however, condition the loss of nationality on knowledge or recognition by the Department of the expatriating act. If an individual commits an expatriating act, his U.S. nationality terminates at the time of the act—subject to later, and potentially difficult, proof that the act was voluntary and performed with the intent to relinquish nationality. See generally 8 U.S.C.

Finally, the court reasoned (Pet. App. 8) that if issuance of a CLN were never deemed to be an administrative denial of a claimed right or privilege of nationality, then CLN recipients who (unlike petitioner) disagreed with the Department's determination that they had performed expatriating acts would not be able to seek a judicial declaration of nationality directly under 8 U.S.C. 1503. They would instead be required to apply for a U.S. passport, wait for the application to be denied, and only then file suit to challenge the denial of the application. Pet. App. 8-9. The court "[did] not believe that such a required sequence of events was within the contemplation of [the] statute." *Id.* at 9.

ARGUMENT

Petitioner contends (Pet. 8-11) that certiorari should be granted because the decision below conflicts with the Third Circuit's decision in *Whitehead* v. *Haig*, 794 F.2d 115 (1986), and presents an important question of federal law warranting review by this Court.

As explained above (see page 4, *supra*), the premise of the Third Circuit's decision in *Whitehead* was that the State Department's issuance of a CLN was automatic and ministerial and was not the product of any administrative proceedings. That premise is incorrect. The State Department will not issue a CLN unless a report has been presented to it that establishes a factual basis for loss of nationality under the applicable statutory provision. In this case, for example, petitioner formally renounced his citizenship, under oath, before the Consul General and two witnesses, in accordance with 8 U.S.C. 1481(a)(5) and its implementing regula-

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1481(b) (burden of proof on loss of nationality); *Vance* v. *Terrazas*, 444 U.S. 252 (1980).

tions, and at the same time executed a "Statement of Understanding" and a "Statement of Decision" that set forth his reasons for doing so. Those materials were then forwarded to the Department of State, and they constituted the "record" on which the Department acted in issuing the CLN. Moreover, after the time that the plaintiff in *Whitehead* renounced his citizenship, the Department adopted regulations establishing a procedure for appealing the issuance of a CLN. See 22 C.F.R. 7.3(a).[2] Persons who receive an approved CLN must be notified of their right to appeal. 22 C.F.R. 50.52; 7 Foreign Affairs Manual § 1232 (1984). Thus, whatever might have been the case when the CLN at issue in *Whitehead* was issued, the court of appeals in this case correctly concluded that the appellate procedure provided by the regulations, considered together with the various statutory bases on which the Department of State may find expatriation, "convey that more than a mere ministerial 'rubber stamp' is involved." Pet. App. 7.

In any event, whatever doubt might once have existed about whether issuance of a CLN should be regarded as a "final administrative denial" of a right or privilege of nationality within the meaning of 8 U.S.C. 1503(a) has been eliminated by the recent enactment of Section 106 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305, which was approved by the President on October 25, 1994. That provision amends Section 358 of the Immigration and Nationality Act (INA), 8 U.S.C. 1501, by adding the following new sentence at the end thereof:

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[2] Whitehead renounced his citizenship and was issued a CLN in 1965. 794 F.2d at 116. The regulations establishing an appeals procedure were promulgated in 1966. See 31 Fed. Reg. 13,537 (1966); 22 C.F.R. 50.60-50.72 (1967).

> Approval by the Secretary of State of a certificate [that a person has lost his United States nationality] shall constitute a final administrative determination of loss of United States nationality under this Act, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 360 [of the INA, 8 U.S.C. 1503].

This explicit statutory directive removes any remaining basis for the Third Circuit's view in *Whitehead* that approval of a CLN does *not* constitute a final administrative denial of a right or privilege as a national of the United States, and makes clear that the five-year statute of limitations in 8 U.S.C. 1503 begins to run upon issuance of a CLN.

The legislative history of the 1994 Act confirms that understanding. The section-by-section analysis included in the record by Senator Kennedy at the time the bill was introduced and first passed the Senate states that "[t]his section responds to the court decision in *Whitehead* v. *Haig*, 794 F.2d 115 (3d Cir. 1986), which held that the statute of limitations for seeking adjudication of citizenship ran only from the denial of a passport application, and not from approval of a Certificate of Loss of Nationality." 139 Cong. Rec. S8554 (daily ed. July 1, 1993).[3]

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[3] The text and legislative history of the 1994 amendment also answer petitioner's alternative reliance (Pet. 11-13) on the quite different rationale of *Maldonado-Sanchez* v. *Shultz*, 706 F. Supp. 54 (D.D.C. 1989), which concluded that the issuance of a CLN to a person who renounces his citizenship is not the "denial" of a right of nationality, but rather the grant of such a right—namely, the right to renounce one's citizenship. *Id.* at 56.

In light of Section 106 of the 1994 Act, review by this Court is plainly unwarranted. That provision resolves the statute-of-limitations issue on a prospective basis. Moreover, the question of when the statute of limitations should be deemed to have commenced with respect to CLNs that have been issued in the past is not one of substantial importance. As petitioner concedes (Pet. 11), since the decision in *Whitehead* eight years ago, there has been only one other published opinion addressing the issue, the district court decision in *Maldonado-Sanchez* v. *Shultz*, 706 F. Supp. 54 (D.D.C 1989) (discussed in note 3, *supra*).[4] There is accordingly no reason to believe that the issue will arise to any significant extent with respect to CLNs issued in the past, and it may properly

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[4] Several other cases decided prior to *Whitehead* raised the same or similar issues. The court below drew support (Pet. App. 5-6) from the statement in *Garcia-Sarquiz* v. *Saxbe*, 407 F. Supp. 789, 792 (S.D. Fla. 1974), aff'd on opinion below, 527 F.2d 1389 (5th Cir. 1976), that the statute of limitations on an action under Section 1503(a) would begin to run at the time of a citizen's renunciation of nationality. This Court's decision in *Vance* v. *Terrazas*, 444 U.S. 252 (1980), and the decisions in *Richards* v. *Secretary of State*, 752 F.2d 1413 (9th Cir. 1985), and *Kahane* v. *Shultz*, 653 F. Supp. 1486 (E.D.N.Y. 1987), all based jurisdiction under Section 1503(a) on issuance of a CLN, although none of those cases involved a formal renunciation of nationality under 8 U.S.C. 1481(a)(5), and *Terrazas* and *Richards* both involved denials after an administrative appeal from the issuance of a CLN. Finally, in *Ferretti* v. *Dulles*, 246 F.2d 544, 546 (1957), the Second Circuit accepted the argument (advanced in that case by the government) that a citizen who resided abroad and who received a notice of expatriation from consular officials after she voted in a foreign election could not maintain an action under Section 1503(a) because she had not yet suffered "the denial of any specific right or privilege [of U.S. nationality] which she had claimed." See also *Linzalone* v. *Dulles*, 120 F. Supp. 107 (S.D.N.Y. 1954) (rejecting similar arguments on behalf of the government).

be left to the lower courts to decide, in the first instance, what effect the 1994 amendment to 8 U.S.C. 1501 should have on the resolution of the statute-of-limitations issue in any future cases that do present that issue.[5]

Nor, finally, is there any need to grant certiorari to ensure a just result in this case. Cf. *Ticor Title Ins. Co.* v. *Brown*, 114 S. Ct. 1359, 1362 (1994). Even if petitioner were entitled to adjudication of his claim on the merits, it is highly unlikely that he could show that his original renunciation of nationality was involuntary. Petitioner, who was 21 years old at the time, now claims (Pet. 6) that his family pressured him into the renunciation. But as in *Maldonado-Sanchez* v. *Shultz*, 706 F. Supp. at 58-61, a case with remarkably similar facts, petitioner has in the end alleged nothing more than that he was confronted, as a young adult, with a difficult choice between maintaining his U.S. citizenship and maintaining good personal and financial relations with his family. That sort of "pressure," however unpleasant, falls far short of the type of duress or coercion that would be required to make petitioner's action "involuntary" in the eyes of the law. See also *Richards* v. *Secretary of State*, 752 F.2d at 1419-1422; compare, *e.g.*, *Brady* v. *United States*, 397 U.S. 742, 749-752 (1970) (guilty plea "voluntary" although to some extent induced by desire to avoid application of

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[5] The Department of State has informed us that from 1985 through the end of August, 1994, the Department issued a total of 4,165 CLNs, or approximately 427 per year. Of course, not all of those CLNs involve renunciations under 8 U.S.C. 1481(a)(5), and in most instances, CLNs that do involve a formal renunciation of U.S. nationality will never be challenged. Petitioner concedes (Pet. 13) that CLNs issued on some basis other than formal renunciation do constitute final administrative denials for purposes of triggering the statute of limitations in 8 U.S.C. 1503(a).

death penalty statute that was later ruled unconstitutional).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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No. 94-161

In The

Supreme Court of the United States

October Term, 1994

WERNER T. HEUER,

Petitioner,

v.

UNITED STATES SECRETARY OF STATE,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITIONER'S REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION

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REPLY ARGUMENT

The Secretary raises three arguments in his brief to support his suggestion that this Court deny Mr. Heuer's Petition for Writ of Certiorari.

First, the Secretary contends that the case of *Whitehead v. Haig*, 794 F.2d 115 (3d Cir. 1986), was incorrectly decided by the Third Circuit Court of Appeals. That contention, however, raises an irrelevant issue. In the instant case, the Eleventh Circuit specifically acknowledged that its decision conflicted with that of the Third Circuit in *Whitehead*. Even if this Court were ultimately to follow the Eleventh Circuit's line of reasoning rather than that of the Third Circuit, a conflict exists. That conflict requires resolution, and the present Petition offers this Court the opportunity to make uniform the law.

Moreover, as acknowledged by the Secretary, the recent enactment of §106 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, ___ Stat. ___ was a direct response to the Third Circuit's *Whitehead* decision. (Opposition at p. 7). This "response" contradicts the Secretary's contention that *Whitehead* was wrongly decided. The legislature's need to amend the statute in order to avoid *Whitehead* illustrates that even the legislature considered *Whitehead* to be a reasonable interpretation of the statute as it then existed.

Second, the Secretary argues that because of the enactment of the 1994 Act, the legal uncertainty faced by Mr. Heuer in the instant case will not be experienced by those who are issued Certificates of Loss of Nationality in the future. In addition, the Secretary contends that the issue raised herein will not "arise to any significant

extent with respect to CLNs issued in the past. . . . " (Opposition at p. 8). The Secretary bases this statement on his notation that during the past approximately nine years, 4,165 CLNs have been issued. Perhaps the Secretary feels that the potential thousands of persons who may be affected by the issue raised herein do not constitute a "significant" number. Mr. Heuer, however, thinks otherwise. In fact, Mr. Heuer agrees wholeheartedly with this Court's assessment that U.S. citizenship is regarded by many "as the highest hope of civilized man." *Schneiderman v. United States*, 320 U.S. 118, 122 (1976). As admitted by the Secretary, the number of potential persons affected by the issue presented herein is in the many of thousands. However, even if that number was a scant few, the rights affected by the issue raised are of such importance and human value, this Court should resolve the conflict.

Third, the Secretary contends that this Court should deny the Petition because Mr. Heuer, if given the opportunity, will not be able to prove his case in the District Court. It is hard to imagine how the Secretary can make this assessment since the dismissal of Mr. Heuer's case was done on the basis of subject matter jurisdiction. No evidence whatsoever has been presented in this case. Moreover, whether the familial pressure placed upon Mr. Heuer can render a renunciation of citizenship involuntary may only be determined upon the particular facts of each case. *See Maldonado-Sanchez v. Schultz*, 706 F. Supp. 54 (D.D.C. 1989).

In summary, a conflict exists between the circuits which raises an issue of invaluable importance to potentially thousands of persons. That conflict can only be

resolved by plenary consideration of the matter by this Court.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully submitted,

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